



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Research Analysis and Maintenance, Inc.

File: B-239223

Date: August 10, 1990

Bob Waldron, for the protester.
Howell Roger Riggs, Jr., Esq., for Technical Assistance International, an interested party.
Herbert F. Kelly, Jr., Esq., and Ron Tudor, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO participated in the preparation of the decision.

DIGEST

1. General Accounting Office will not object to evaluation of technical and cost proposals where review of source selection documents shows that the evaluation was fair and reasonable and consistent with the evaluation criteria in the solicitation.
2. Although solicitation provided that technical and management factors were more important than cost, agency may award to technically lower rated, lower cost offeror instead of higher cost, higher technically rated offeror, where the contracting officer reasonably determines that there is no significant technical difference between proposals and that award to lower cost offeror is most advantageous to the government.

DECISION

Research Analysis and Maintenance, Inc. (RAM) protests the award of a contract to Technical Assistance International, Inc. (TAI), under request for proposals (RFP) No. DABT51-89-R-0264, issued by the Department of the Army to provide maintenance for the Nike Hercules missile system to support the Japanese Air Self Defense Force at McGregor Range, New Mexico. RAM, the incumbent contractor, alleges that the Army did not follow the RFP evaluation criteria in evaluating proposals, that the Army failed to conduct an adequate cost realism analysis of TAI's cost proposal, and

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that the Army improperly determined TAI to be a responsible offeror.

We deny the protest.

The procurement was conducted under the foreign military sales program on behalf of Japan. The RFP, issued on September 25, 1989, provided that award would be made to the offeror whose proposal is the most advantageous to the government, all factors considered. The RFP, as amended, requested the submission of separate technical and cost proposals and contemplated the award of a 1-year plus 2 option years fixed price, level-of-effort, labor hour contract. Offerors were required to specify hourly rates, estimated labor hours, and the categories of labor. The hourly rates were to include direct labor, labor burden, general and administrative expenses, profit and all other related costs. The RFP contained three principal evaluation factors listed in descending order of importance--technical, management and cost realism. The technical factor was divided into the following subfactors: (1) experience; (2) staffing; (3) comprehension of requirement; and (4) phase-in period. Of these four subfactors, subfactors one and two were of equal value and significantly more important than subfactor three. Concerning cost, the RFP provided that proposals would be evaluated to assess the degree to which proposed costs accurately reflected proposed performance. The cost proposals were required to contain the following elements: cost allocation, balance of proposed cost, and cost control experience.

Three firms submitted proposals, two of which were included in the competitive range. The technical rating and cost of the initial proposals included in the competitive range were as follows:

| <u>Offeror</u> | <u>Technical Rating</u> | <u>Total Price</u> |
|----------------|-------------------------|--------------------|
| RAM | 93.16 | \$3,934,972 |
| TAI | 96.5 | 2,655,106 |

The agency held discussions with both competitive range offerors and requested best and final offers (BAFOs). Based on a technical and management evaluation of the BAFOs, the evaluation team gave RAM a combined score of 97.75 and TAI a score of 98.25. The evaluation team stated that they were unable to evaluate compensation benefits, raises, etc. and the comprehension of the requirement concerning the furnishing of office equipment for the RAM proposal, because this information had not been included in the technical

portion of RAM's BAFO as requested during discussions. The contracting officer, also acting as the source selection authority, adjusted RAM's score upward, since the requested information was included in the cost portion of RAM's BAFO. The results of the final evaluation were as follows:

| | <u>Technical Rating</u> | <u>Total Price</u> |
|------------|-------------------------|--------------------|
| RAM | 99.5 | \$3,844,411 |
| TAI | 98.25 | 2,922,754 |
| Difference | 1.25 | 921,657 |

The Army determined that an award to the protester would involve a significant price premium which the small difference in the technical scores did not seem to justify (approximately a 32 percent higher price for a difference in technical score of 1.25).^{1/} The Army determined that TAI's offer would satisfy the government's requirements and that its price was considered fair and reasonable, based on adequate competition and a cost realism analysis. Award was made to TAI on April 5, 1990. RAM filed its protest with our Office on April 9.

RAM first contends that the Army failed to evaluate TAI's experience in accordance with the RFP's evaluation criteria. RAM specifically complains that TAI has no direct experience with Nike Hercules missiles; limited indirect related experience with the missiles; no experience for missile handling maintenance support for missile mating operations containing high explosive materials such as warheads, rocket motors and boosters; and limited qualified personnel available with direct Nike Hercules missile system experience.^{2/}

^{1/} The agency thought that the price difference may be even greater due to the question of mathematical errors in RAM's cost proposal.

^{2/} RAM also argues that the evaluation was defective because the RFP required the award of a fixed-price, level-of-effort contract but did not specify the level of effort required, thus making it difficult to compare the approaches offered by the two offerors. Since it was clear from the face of the solicitation that offerors were required to formulate the number and skill level of the required staff based on the statement of work, we dismiss this protest ground as untimely. We view this protest contention as concerning an alleged impropriety apparent in (continued...)

We will examine an agency's evaluation to insure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. A protester's disagreement with the agency's evaluation is itself not sufficient to establish that the agency acted unreasonably. Unidynamics St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

Regarding past performance, the RFP required qualifications and past experience in the performance of maintainability and operational engineering tasks, including the knowledge to maintain and operate Army missile system components and equipment. The RFP requested a synopsis of work covered by government contracts for similar and related development effort. This language does not require direct Nike Hercules missile experience and permits offerors to establish engineering experience by prior performance in maintaining and operating other Army missile systems.

TAI's experience as contained in its proposal includes numerous engineering contracts for other Army missile systems such as HAWK missile telemetry services, Army multiple launch rocket systems field engineering services, TOW field engineering services, and automated test equipment systems field engineering services. The Army determined that TAI's past experience with these other missile systems demonstrated its knowledge and capabilities to successfully manage similar services such as the Nike Hercules system. We find the Army's evaluation of TAI's experience reasonable and consistent with the evaluation criteria.

As stated above, to the extent RAM is protesting the RFP's stated evaluation criteria, which did not, with respect to the experience factor, require Nike Hercules missile system experience, the protest is untimely. The solicitation required offerors to have experience maintaining Army missile systems in general. As such, RAM's contention concerns an alleged solicitation impropriety which should have been protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

RAM also protests that the Army did not require any letters of commitment from proposed personnel and improperly concluded that TAI's proposed staffing was acceptable.

2/(...continued)

the solicitation which should have been protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1990).

The solicitation required information concerning the proposed key personnel and a recruitment plan which demonstrates the offeror's ability to obtain the personnel necessary to perform the services. It did not require letters of commitment. TAI submitted resumes for its key personnel, including two RAM employees who had authorized use of their resumes. It also included a recruitment plan which provided for hiring from the incumbent's workforce and also for interviewing a large pool of applicants with the necessary qualifications. The Army reviewed the resumes and this plan and concluded that TAI did have the key personnel and ability to hire a full workforce with the proper qualifications. Based on our review of the record, we find no basis to conclude the Army's determination was unreasonable.

To the extent RAM maintains that the staffing proposed by TAI is insufficient to perform the requirement, thus demonstrating a lack of understanding of the RFP requirements, our review of the record does not substantiate RAM's contention. As a result of the evaluation of TAI's initial proposal and responses during discussions, the Air Force specifically determined that based on TAI's particular approach to fulfilling the requirement, calling ramping, which involves increasing staff during missile firing periods and decreasing staff during non-firing periods, that its proposed staffing level and skill mix was sufficient to perform the requirement. TAI's proposal included use of overtime and part-time workers to augment its staff when necessary to meet RFP requirements. RAM argues that TAI cannot meet solicitation requirements with its proposed staffing essentially because ramping is not feasible. However, RAM's proposal contains a similar approach by proposing significant additional labor hours during the firing period. We think the agency's conclusion that TAI's staffing approach was acceptable and feasible was reasonable.^{3/}

RAM argues that the Army should not have included TAI in the competitive range prior to performing a preaward survey and

^{3/} RAM also makes several general allegations suggesting that the Army engaged in technical leveling. These allegations center around certain alleged defects in the RFP specifications, such as the failure of the RFP to require direct Nike Hercules missile experience and firm commitments for proposed personnel. Once again, we view these allegations as concerning alleged improprieties in the solicitation which should have been protested prior to the initial closing date. 4 C.F.R. § 21.2(a)(1) (1990).

in general objects to the Army finding TAI responsible without actually performing a preaward survey.

The Army's competitive range determination was based on its evaluation of the technical acceptability of the offerors' proposals. The concept of technical acceptability is a matter which is distinct from responsibility. Technical acceptability concerns an assessment of whether the offeror's approach and resources set forth in its proposal are adequate to meet the needs of the agency as expressed in the RFP. See Federal Acquisition Regulation (FAR) § 15.608(a). In contrast, responsibility involves an assessment of an offeror's ability to perform in accordance with the terms of its proposal, and is generally determined by an investigation which is conducted after or aside from the actual competition and which may include the use of preaward surveys. Preaward surveys are not proper vehicles for determining technical acceptability. Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300.

It was also proper for the agency to elect not to conduct a preaward survey since the record indicates that it had adequate information to support its responsibility determination. See Automated Datatron Inc., 68 Comp. Gen. 89 (1988), 88-2 CPD ¶ 481. The agency used the detailed prior contract performance history contained in TAI's proposal and discussed TAI's performance with the government officials who administered these contracts. The references called gave favorable information concerning TAI's performance. To the extent RAM is arguing that the Army improperly determined TAI to be responsible, our Office will not review an affirmative responsibility determination except in circumstances not present here. 4 C.F.R. § 21.3(m)(5); Ship Analytics, Inc., B-225798, June 23, 1987, 87-1 CPD ¶ 621.

Next, RAM asserts that because of the Army's failure to develop a staffing model for comparison with the staffing proposals submitted by each offeror, the Army could not perform a proper cost realism analysis of the offers.

The purpose of a cost realism evaluation by an agency under a level-of-effort-type contract is to determine the extent to which the offeror's proposed labor rates and other costs are realistic and reasonable. An evaluation of this nature necessarily involves the exercise of informed judgment. We will review such an evaluation to insure it was fair and reasonable. See Systran Corp., B-228562, B-228562.2, Feb. 29, 1988, 88-1 CPD ¶ 206.

We have reviewed the Army's cost realism evaluation here in light of RAM's allegation and find the results reached were reasonable. The RFP did not specify any particular method of determining cost realism. While a staffing model for use with all offerors was not developed, the government instead developed a cost estimate based on an offeror's individual approach to satisfying the requirement and used labor and overhead cost input from the Defense Contract Audit Agency (DCAA). The record shows that the Army evaluated each cost aspect of TAI's proposal. For example, the Army questioned certain proposed wage rates, labor hours and job classifications. The Army recommended certain increases and decreases in these categories that TAI agreed to in its BAFO. The Army ultimately accepted the number of labor hours and rates proposed by TAI because it concluded that TAI's proposed approach to satisfying the requirement was acceptable and could be performed at the cost proposed.

RAM argues that it was actually the low offeror because its fully loaded labor hour price for every identical labor category was in fact lower than the price per labor hour awarded to TAI. RAM maintains that if you applied its rates to the same number of hours per category as offered by TAI, then RAM's ceiling price would be \$20,000 less than TAI's for the base year of performance.

RAM's argument here is misleading. Its hourly rate is lower than TAI's only because it proposed a large number of labor hours to support its approach to meeting the RFP requirements. RAM's labor hours and rates cannot be directly compared to TAI's because TAI's proposed labor hours were based on its different approach of using less hours to satisfy the requirement.

RAM also asserts that the award to TAI, the low offeror, was improper because of the solicitation's emphasis on technical factors. We disagree. Here, the technical proposals were virtually identically scored. Even assuming the protester's proposal was rated superior, we have generally held that notwithstanding an emphasis on technical factors, an agency may award to a lower priced, lower technically scored offeror if it determines that the cost premium involved in awarding to a higher rated, higher priced offeror is not justified given the acceptable level of technical competence at the lower cost. See Carrier Joint Venture, B-233702, Mar. 13, 1989, 89-1 CPD ¶ 268. Based on the record, we find reasonable the contracting officer's determination that the protester's proposal was not sufficiently superior in merit (if at all) to warrant the cost premium involved.

Lastly, the protester suggests that there was a lack of impartiality during the source selection because a former RAM employee served as an evaluator. RAM admits having knowledge of the former employee's participation in the procurement during discussions and prior to the request for BAFOs. RAM states that it did not protest at that time because of its misconception that it was the sole offeror for this requirement. We find this allegation of bias to be untimely because it was filed more than 10 working days after RAM knew or should have known the basis for protest. See 4 C.F.R. § 21.2(a)(2). In any event, prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or supposition. In fact, the record shows that this former employee had received a promotion as a RAM employee and left RAM in good standing to accept a government position. Since our review of the record indicates that the evaluation and selection was reasonable, we think the protester's suggestion of agency bias is unsupported by the record. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441.

The protest is denied.



for James F. Hinchman
General Counsel